

**UNIVERSITY OF CALIFORNIA**

**ACADEMIC SENATE**

**UNIVERSITY COMMITTEE ON PRIVILEGE AND TENURE**

January 28, 2008 Teleconference Meeting Minutes

Attending: Sarah Fenstermaker, chair (UCSB)

Ching Wang, vice chair (UCSF); David Blake (UCI); Barry O'Neill (UCLA); Gregg Herken (UCM); J. Daniel Hare (UCR); Miller Puckette (UCSD); Cynthia Brown (UCSB); Catherine Soussloff (UCSC); Nicholas Jewell (Vice Provost for Academic Personnel); Sheila O'Rourke (Assistant Vice Provost, Academic Advancement); Maria Shanle (University Counsel); Michael LaBriola (Committee Analyst)

**I. General Announcements**

**REPORT:** Chair Fenstermaker welcomed UCP&T members, who introduced themselves. Assistant Vice Provost Sheila O'Rourke noted that the Office of Academic Advancement is available as a resource to the committee for advice and expertise about faculty grievance policy and procedures. University Counsel Maria Shanle added that another attorney from the Office of General Counsel would be assigned to UCP&T on a temporary basis beginning April 1.

**II. Proposed Amendment to Senate Bylaw 337 – Privilege and Tenure: Divisional Committees – Early Termination Cases**

**ISSUE:** UCP&T reviewed a proposed amendment from the Berkeley division to [Senate Bylaw 337](#), which governs procedures used by divisional Privilege and Tenure committees in early termination cases. The University Committee on Rules and Jurisdiction had already endorsed the proposal as consistent with Senate bylaws and the Regents Standing Orders.

Assistant Vice Provost O'Rourke noted that all bylaws governing Privilege and Tenure committee procedures were revised significantly in the late 1990s under the leadership of then-UCPT Chair George Blumenthal. Bylaw 337 was created as a separate bylaw to clarify the distinction between procedures for an early termination grievance and those for grieving the non-renewal of an appointment. She said early terminations are extremely rare. Under current policy, if an early termination is proposed by the administration, the faculty member may request a early termination hearing, but if that hearing does not commence before the term actually expires, there has been, in effect, no early termination, but rather a non-renewal of the appointment. Grievances for non-renewals may be brought then proceed under [Bylaw 335](#) for Senate faculty and in [APM 140](#) for non-Senate faculty. Berkeley's proposed new language, however, would guarantee faculty an early termination hearing as long as they request it before the end of their term, even if their appointment expires before they are terminated. She cautioned that the amendment would force the Senate to hold an early termination hearing when no early termination occurred. She said the appointment's expiration does not remove due process; it just transforms the early termination process to the appropriate a different grievance mechanism for the non-renewal action. The current language motivates faculty members and P&T committees to request and hold hearings promptly, while the new language would lengthen due process and focus attention on personnel actions that didn't happen.

UCPT members noted that in an early termination hearing, the administration has the burden of providing convincing evidence that there is good cause for early termination, while in a non-renewal grievance matter, the burden shifts to the faculty member. A faculty member who initiates an early termination grievance procedure deserves to have the option of seeing that process through to completion, even if their appointment expires. The proposed early termination could still be seen as a stain on the faculty member's record, so he or she should have a choice of saying the early termination was unfair and expunging the action from their record. Under the current language, the faculty member may have to begin a new grievance process, in which they

have the burden of proof. The new wording gives the faculty member a choice of proceeding an early termination or non-renewal grievance process. In both cases, the remedy for an inappropriate early termination or non-renewal could include reinstatement. Whatever hearing is conducted for early termination should follow the procedures of Bylaw 337, with the burden of proof resting with the Administration, rather than through Bylaw 335.

One member noted that UCPT should consider the issue of establishing deadlines for ongoing grievances that have never been fully responded to by the grievant.

**ACTION:** A draft response will be circulated to members before UCPT submits comments to Council.

## **II. The Use of “Collegiality” in the Academic Personnel Process**

Chair Fenstermaker reported a concern that undefined notions of “collegiality” are being used by some departments and CAPs as either a point of discussion or a formal criterion for decisions about merits and promotions. At the request of the University Committee on Academic Freedom, Academic Council asked UCPT and UCAP to consider the use of “collegiality” in the faculty merit and promotion review process. UCAF also asked Council to inform faculty of their responsibility to participate in civil discourse and to suspend the use of “collegiality” in the evaluation of candidates until the matter is clarified.

UCPT members noted that “collegiality” is difficult, if not impossible, to define. It was also a little unclear to the committee how UCAF was conceiving the term, which may include such concepts as professional integrity, citizenship, and a willingness to work together and engage in civil demeanor and discourse. The committee felt it would be difficult to implement or enforce UCAF’s recommendation #1 and #2.

At the same time, members felt that basing academic personnel decisions on an alleged lack of collegiality would be worrisome for several reasons. First, the concept of “collegiality” can be influenced by cultural background and gender, so that women and other groups could be criticized or penalized for “non-collegial” behavior that is simply different from pervading cultural norms. Other faculty members with unpopular political views or personalities could also face unfair sanction under the pretext of non-collegiality.

In addition, most UCPT members agreed that reviewing agencies should evaluate academic personnel candidates only on the criteria outlined in APM 210 – scholarship, teaching, professional activity, and service. Because the term “collegiality” is not used in the APM, it should not be considered in departmental or CAP decisions. The [Faculty Code of Conduct](#) also includes language forbidding the use of inappropriate criteria in the evaluation of a faculty member’s professional competence. Basing academic personnel review actions on any inappropriate criteria, including collegiality, could give faculty members cause for a grievance. Moreover, it is inappropriate to resolve violations of the Code of Conduct in personnel actions. If there is evidence of extreme non-collegiality, such issues should be taken through the disciplinary hearing process.

Other UCPT members felt that violations of the Faculty Code were relevant to the academic personnel process. Plagiarism, for example, could be a violation of APM 015 and also have relevance to a promotion or tenure decision. The relevance and power of APM 015 is lessened if reviewing committees are not able to discuss these subjects. These members also noted a distinction between mentioning issues of collegiality if they are seen as relevant to the criteria in APM 210 and using those issues as a sole basis for an action.

Finally, the committee decided to endorse UCAF’s recommendation #3. Members felt faculty need more education about collegiality, the ways in which the Faculty Code of Conduct

guides faculty behavior, and how inappropriate issues may enter into the academic personnel process. Faculty should also be more aware of the different avenues they have to grieve.

**ACTION:** UCPT will submit comments.

### **III. Divisional P&T Survey**

The committee reviewed the 2006-07 divisional P&T activity survey. Chair Fenstermaker asked members to consider ways to improve the survey instrument, weighing their desire for detail against the need to preserve confidentiality. Members decided the survey should in some way capture the time committee members spend talking to faculty about grievance policies and processes.

### **IV. Implementation of the New Faculty Salary Scales**

Chair Fenstermaker and UCPT members reported that the recent adjustments to the salary scales have raised a number of local issues and concerns, including complaints that the consultation with faculty on the scales varied from campus to campus, questions about whether a legal obligation is implied in appointment and retention agreements that refer to specific off-scale salaries amounts, and concern that some merit-based off-scale differentials have been absorbed in the new scales. Finally, there is some confusion about whether off-scales are still an appropriate way to reward exceptional merit. Some P&T committees are expecting cases to come forward from faculty who were informed later than others and feel disadvantaged in acceleration and merit decisions this year; those who felt that off-scale merits given for meritorious performance were erased unfairly; and those up for merit and promotion in either of the two years following implementation who may not be treated equally to those on the call this year. The chair said UCPT is not currently in a position to address systemwide policy, but local committees may be confronted with some of these issues on a case-by-case basis.

Vice Provost Nicholas Jewell said the Regents approved a four-year plan to raise the salary scales in late September that was effective October 1, which meant there was limited time to discuss the details of the plan with faculty. He said restoring UC faculty salaries to competitive levels remains the highest priority for the University. At the same time, funding the full four-year plan is dependent to some extent on continued funding from the state that is not assured in the current budget environment. The faculty salary scales are University-wide, but some individual campuses are using their flexibility to supplement the plan – for instance, by using discretionary funds to maintain some off-scale differentials. Campuses should continue to have the flexibility to address local issues based on local circumstances and needs, rather than have all issues predetermined by UCOP. Campuses have also been urged to look at individual cases to insure the plan is being implemented equitably. He said he was unable to comment on potential legal implications, but any language used about a scale one year is necessarily superseded when the scale fundamentally changes.

### **V. Other Items**

UCPT decided not to comment on three new items out for Senate review: the Regents Diversity Study Group Reports; two California state bills; and a Proposed Transitional Leave Policy for members of the Senior Management Group

The meeting adjourned at 12:00.

Minutes prepared by: Michael LaBriola

Attest: Sarah Fenstermaker